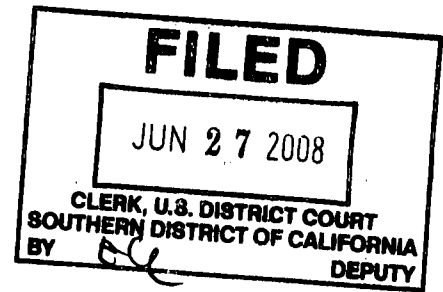


1 John C. Wynne (Bar No. 83041)  
2 Elizabeth Burke Vann (Bar No. 249252)  
3 **DUCKOR SPRADLING METZGER & WYNNE**  
4 A Law Corporation  
3043 4<sup>th</sup> Avenue  
San Diego, California 92103  
(619) 209-3000; (619) 209-3043 fax



5 Attorneys for Defendants S.A. THOMPSON, INC., a  
6 California corporation dba ROTO-ROOTER SEWER  
& DRAIN CLEANING SERVICE; STANLEY A.  
7 THOMPSON; and LINDA A. BLACK

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 BRIAN KING; PATRICK SOVACOOOL;  
11 and REX MAXWELL, individually, and as  
12 private attorney generals in the interests of  
the general public,

13 Plaintiffs,

14 v.

15 S.A. THOMPSON, INC., a California  
16 corporation D.B.A. ROTO-ROOTER  
SEWER & DRAIN CLEANING  
17 SERVICE; STANLEY A. THOMPSON;  
LINDA A. BLACK; and DOE 1 through  
DOE 10, inclusive,

18 Defendants.  
19

CASE NO. **08 CV 1164 L AJB**

**NOTICE OF REMOVAL UNDER 28 U.S.C.  
§ 1441(b) (FEDERAL QUESTION)**

Judge:  
Trial Date: None set

20 **TO: THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT**  
21 **OF CALIFORNIA**

22 Come now Defendants, S.A. THOMPSON, INC., a California corporation D.B.A. ROTO  
23 ROOTER SEWER & DRAIN CLEANING SERVICE, STANLEY A. THOMPSON, and LINDA  
24 A. BLACK, by and through their undersigned counsel of record, and hereby give Notice of  
25 Removal of the civil action entitled *Brian King, et al., v. S.A. Thompson, Inc., et al.*, Case No. 37-  
26 2008-00054093-CU-OE-NC ("the Lawsuit"), from the Superior Court of the State of California,  
27 in and for the County of San Diego, North County Division, to the United States District Court  
28 for the Southern District of California. In support thereof, Defendants respectfully state to this

CR  
DUCKOR  
SPRADLING  
METZGER  
& WYNNE

384713.1

NOTICE OF REMOVAL UNDER 28 U.S.C. § 1441(b) (FEDERAL QUESTION)

Case No

1 honorable Court as follows:

2 1. On or about May 7, 2008, Plaintiffs filed the original Complaint initiating this  
3 Lawsuit. A copy of the original Complaint is attached hereto as **Exhibit A**.

4 2. The original Complaint consisted of three state law causes of action alleging  
5 violations of unfair competition under the Business & Professions Code, violations of the Labor  
6 Code, and violations of public policy. *See* Exhibit A.

7 3. Plaintiffs' original Complaint was not removable inasmuch as it only alleged  
8 violations of state law and the parties were not diverse.

9 4. On or about May 30, 2008, Plaintiffs filed their First Amended Complaint. A  
10 copy of the First Amended Complaint is attached hereto as **Exhibit B**.

11 5. Prior to filing the First Amended Complaint, counsel for Plaintiffs inquired as to  
12 whether counsel for Defendants had the authority to receive service on behalf of Defendants, and  
13 counsel for Defendants represented that they did have such authority. A copy of the Amended  
14 Complaint was received at defense counsel's office on June 10, 2008, but no Notice and  
15 Acknowledgment of Service form was served with it. Counsel for Plaintiffs maintain that the  
16 California Rules of Civil Procedure do not require a Notice and Acknowledgement of Service  
17 form to be served and signed in this instance, and thus, contend that service of the First Amended  
18 Complaint was effectuated on June 10, 2008. Counsel for Defendants maintain that the  
19 California Rules of Civil Procedure do require a Notice and Acknowledgement of Service form to  
20 be served and signed, and thus contend that service of the First Amended Complaint was not  
21 effectuated until June 24, 2008, the date on which counsel for Defendants provided written notice  
22 to Plaintiffs' counsel that they were accepting service. *See* Declaration of Elizabeth Vann  
23 attached hereto as **Exhibit C**.

24 6. Plaintiffs' First Amended Complaint consists of four causes of action which  
25 include the three causes previously included in the original Complaint as well as a claim that  
26 Defendants violated the Fair Labor Standards Act of 1938, Title 29, Chapter 8, Section 207 of the  
27 United States Code.

28 7. Plaintiffs' First Amended Complaint is the first document from which it may be

1 ascertained that the Lawsuit is removable.

2 8. In accordance with 28 U.S.C. § 1446(b), whether service of the First Amended  
3 Complaint is deemed to have been effectuated on June 10, 2008, as claimed by Plaintiffs, or on  
4 June 24, 2008, as claimed by Defendants, this Lawsuit is removable because this Notice of  
5 Removal is filed within thirty days of receipt by Defendants of an amended pleading from which  
6 it could first be ascertained that the Lawsuit is one which could be removed under 28 U.S.C.  
7 § 1332.

8 9. In addition, this Notice of Removal is being filed less than one year after  
9 commencement of the Lawsuit.

10 10. Defendants' Notice of Removal is accompanied by written notice to Plaintiffs and  
11 a copy of Defendants' Notice of Removal is being filed with the Clerk of the Superior Court of  
12 the State of California, in and for the County of San Diego, North County Division, on this date  
13 as required by 28 U.S.C. § 1446(d).

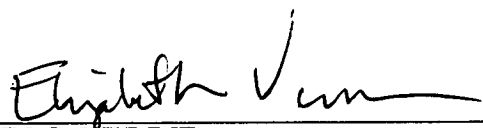
14 11. No other defendant has been served with the summons and complaint and thus  
15 there is no other defendant party to join in this Notice of Removal.

16 WHEREFORE, Defendants S.A. Thompson, Inc., Stanley A. Thompson, and Linda A.  
17 Black provide Notice of Removal of the above-captioned action pending in the Superior Court of  
18 the State of California, in and for the County of San Diego, North County Division, to the United  
19 States District Court for the Southern District of California.

20 DATED: June 21<sup>st</sup>, 2008

DUCKOR SPRADLING METZGER & WYNNE  
A Law Corporation

23 By:

  
24 JOHN C. WYNNE  
25 ELIZABETH BURKE VANN  
26 Attorneys for Defendants,  
27 S.A. THOMPSON, INC., a California  
28 corporation dba ROTO-ROOTER SEWER &  
DRAIN CLEANING SERVICE; STANLEY A.  
THOMPSON; and LINDA A. BLACK

John C. Wynne, Esq. (SBN 83041)  
 Elizabeth B. Vann (SBN 249252)  
 DUCKOR SPRADLING METZGER & WYNNE  
 3043 4<sup>th</sup> Avenue  
 San Diego, CA 92103  
 (619) 209-3000

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

BRIAN KING; PATRICK SOVACOO; and REX  
 MAXWELL, individually, and as private attorney  
 generals in the interest of the general public,

Plaintiffs,

v.

S.A. THOMPSON, INC., a California corporation  
 d.b.a. ROTO-ROOTER SEWER & DRAIN  
 CLEANING SERVICE; STANLEY A.  
 THOMPSON; LINDA A. BLACK; and DOE 1  
 through DOE 10, inclusive,

Defendants.

No.:

**DECLARATION OF SERVICE**

Person Served:

Attorney for Plaintiff:  
 Matthew P. Tyson, Esq.  
 Zachary T. Tyson, Esq.  
 TYSON & TYSON, LLP  
 2550 Fifth Ave., 9<sup>th</sup> Floor  
 San Diego, CA 92103  
 Tel: (619) 720-8350  
 Fax: (619) 615-2173

Date Served: June 27, 2008

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; that I served the above-named person the following documents:

**NOTICE OF REMOVAL UNDER 28 U.S.C. SECTION 1441(b) (FEDERAL QUESTION)**

in the following manner:

check one)

- 1) ☐ By personally delivering copies to the person served.
- 2) ☐ By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid), copies to the person served at the place where the copies were left.
- 3) ☒ By placing a copy in a separate envelope, with postage fully prepaid, for each address named below and depositing each in the U.S. Mail at San Diego, California, on June 27, 2008.
- 4) ☐ By fax transmission, I faxed the documents to the person at the fax number listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 27, 2008, at San Diego, California.

  
 Dawna Kirby



MATTHEW P. TYSON (#178427)  
ZACHARY T. TYSON (#211185)  
TYSON & TYSON, LLP  
2550 Fifth Avenue, 9th Floor  
San Diego, California 92103  
Phone: (619) 720-8350  
Fax: (619) 615-2173

Attorneys for BRIAN KING,  
PATRICK SOVACOOOL, and REX MAXWELL

2008 MAY -7 PM 12: 11

CLERK OF SUPERIOR COURT  
SAN DIEGO COUNTY, CA

FILE STAMP  
CANCELLED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

BRIAN KING; PATRICK SOVACOOOL; and  
REX MAXWELL, individually, and as private  
attorney generals in the interests of the  
general public,

Plaintiffs,

v.

S. A. THOMPSON, INC., a California  
corporation D. B. A. ROTO-ROOTER SEWER  
& DRAIN CLEANING SERVICE; and DOE 1  
through DOE 10, inclusive,

Defendants.

Case No. 37-2008-00054093-CU-OE-NC

BRIAN KING, PATRICK SOVACOOOL, AND  
REX MAXWELL'S COMPLAINT AGAINST S. A.  
THOMPSON, INC., D. B. A. ROTO-ROOTER  
SEWER & DRAIN CLEANING SERVICE, FOR:

1. UNFAIR COMPETITION;
2. VIOLATION OF LABOR CODE; AND
3. VIOLATION OF PUBLIC POLICY

[JURY TRIAL DEMANDED]

BRIAN KING, PATRICK SOVACOOOL, and REX MAXWELL allege:

PARTIES, JURISDICTION, AND VENUE

1. Each Plaintiff is an individual residing in San Diego County.
2. On information and belief, S. A. THOMPSON, INC. is a California corporation with its headquarters in San Diego County and doing business as ROTO-ROOTER SEWER & DRAIN CLEANING SERVICE in San Diego County.

3. The true names and capacities of DOE 1 through DOE 10 are unknown, and Plaintiffs will seek leave to amend this complaint to set forth the true names and capacities thereof when they have been ascertained.

4. On information and belief, each of the fictitiously named DOE defendants is responsible for, or has contributed to, the matters giving rise to the relief sought herein.

5. Plaintiffs seek an award of damages in an amount exceeding twenty five thousand dollars (\$25,000).

FIRST CAUSE OF ACTION  
BY ALL PLAINTIFFS AND AGAINST ALL DEFENDANTS  
FOR UNFAIR COMPETITION

6. Each Plaintiff was an employee of Defendants.

7. Defendants have violated and continue to violate Business & Professions Code, section 17200, *et seq.*, by engaging in acts of unfair competition, including, but not limited to, the following:

a. Unlawfully withholding part of the pay owed to employees, including each Plaintiff, in violation of Labor Code sections 216, 221, and 223;

b. Failing to pay employees, including each Plaintiff, all wages earned and owing at the time of their separation from employment in violation of Labor Code sections 201, 202, and 203;

c. Failing to maintain a designated wage scale as required by statute or contract for public works services performed by employees, including each Plaintiff, pursuant to Labor Code section 223;

d. Failing to provide employees, including each Plaintiff, with an itemized written statement accurately reflecting gross wages earned, piece-rate earnings, the applicable piece rate, all deductions taken, net wage earned, in violation of Labor Code section 226;

1 e. Failing to indemnify employees, including each Plaintiff, for losses incurred in  
2 the course of the discharge of their duties;

3 f. Failing to provide employees, including each Plaintiff, with tools necessary to  
4 perform the work they were hired to perform in violation of Labor Code section 2802;

5 g. Retaliating against employees, including each Plaintiff, by reducing their pay  
6 as a result of employee complaints, including those made by PATRICK SOVACOO, of Defendants  
7 unlawfully failing to provide tools necessary to perform the work they were hired to perform, and  
8 refusing to perform work under a real and apparent hazard, in violation of public policy and pursuant  
9 to Labor Code sections 221, 2802, 6310 and 6311.

10 8. Each Plaintiff has suffered, and continues to suffer, damages as a result of the  
11 conduct of Defendants.

12 9. Each Plaintiff is acting in its own interests, and as a private attorney general in the  
13 interests of the general public, and, as a result of unfair competition, Defendants have caused each  
14 Plaintiff to suffer injury in fact and lose money or property.

15 10. Defendants should be enjoined from committing acts of unfair competition.

16 11. Defendants should make full restitution to employees to restore all monies owing to  
17 employee but acquired or retained by Defendants as a result of unfair competition.

18 12. Defendants should be assessed a civil penalty of two thousand five hundred dollars  
19 (\$2,500) against Defendants for each act of unfair competition, a civil penalty of one hundred dollars  
20 (\$100) per initial violation, and two hundred dollars (\$200) per subsequent violation, for unlawfully  
21 withholding wages, and a civil penalty of fifty dollars (\$50) against Defendants for each act of failure to  
22 pay overtime wages, according to proof at trial.

23 13. Each Plaintiff is entitled to an award of statutory penalties, statutory damages, unpaid  
24 wages, interest, costs of suit, and attorney fees, against Defendants according to proof at trial.



1 SECOND CAUSE OF ACTION  
2 BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS  
3 FOR VIOLATION OF LABOR CODE

4 14. Plaintiff re-alleges paragraphs 6 through 8.

5 15. Defendants violated Labor Code sections 201, 202, 203, 216, 221, 223, 226, 2802,  
6 6310 and 6311.

7 16. Each Plaintiff is entitled to an award of statutory penalties, statutory damages, unpaid  
8 wages, interest, costs of suit, and attorney fees, against Defendants according to proof at trial.

9 THIRD CAUSE OF ACTION  
10 BY PATRICK SOVACOOOL AGAINST ALL DEFENDANTS  
11 FOR VIOLATION OF PUBLIC POLICY

12 17. Plaintiff re-alleges paragraphs 6 through 8.

13 18. The conduct of Defendants was outrageous, and intended to cause PATRICK  
14 SOVACOOOL emotional distress.

15 19. PATRICK SOVACOOOL suffered severe emotional distress.

16 20. The conduct of Defendants was a substantial factor in causing PATRICK SOVACOOOL  
17 to suffer severe emotional distress.

18 21. Defendants acted with malice or oppression towards PATRICK SOVACOOOL.

19 22. PATRICK SOVACOOOL should be awarded compensatory damages, punitive and  
20 exemplary damages, costs of suit, and attorney fees, against Defendants according to proof at trial.

21 Respectfully submitted,

22 Dated: 5-7-08

23 TYSON & TYSON, LLP

24 By: Matthew P. Tyson  
MATTHEW P. TYSON  
ZACHARY T. TYSON

\* \* \* ERROR REPORT ( MAY. 12. 2008 1:21PM ) \* \* \*

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M : MEMORY TX  
S : STANDARD  
\* : PCC : CONFIDENTIAL  
L : SEND LATER  
D : DETAIL  
+ : ROUTING\$ : TRANSFER  
@ : FORWARDING  
F : FINE  
Q : RECEPT. NOTICE REQ.P : POLLING  
E : ECM  
> : REDUCTION  
A : RECEPT. NOTICE



2008 MAY 30 PM 4:23  
CLERK OF SUPERIOR COURT  
SAN DIEGO COUNTY, CA

MATTHEW P. TYSON (#178427)  
ZACHARY T. TYSON (#211185)  
TYSON & TYSON, LLP  
2550 Fifth Avenue, 9th Floor  
San Diego, California 92103  
Phone: (619)-720-8350  
Fax: (619) 615-2173

Attorneys for BRIAN KING,  
PATRICK SOVACOOOL, and REX MAXWELL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

BRIAN KING; PATRICK SOVACOOOL; and  
REX MAXWELL, individually, and as private  
attorney generals in the interests of the  
general public,

Plaintiffs,

v.

S. A. THOMPSON, INC., a California  
corporation D. B. A. ROTO-ROOTER SEWER  
& DRAIN CLEANING SERVICE; STANLEY A.  
THOMPSON; LINDA A. BLACK; and DOE 1  
through DOE 10, inclusive,

Defendants.

Case No. 37-2008-00054093-CU-OE-NC

Department N-28  
HON. MICHAEL B. ORFIELD

BRIAN KING, PATRICK SOVACOOOL, AND  
REX MAXWELL'S FIRST AMENDED  
COMPLAINT AGAINST S. A. THOMPSON,  
INC., D. B. A. ROTO-ROOTER SEWER &  
DRAIN CLEANING SERVICE, STANLEY A.  
THOMPSON, AND LINDA A. BLACK, FOR:

1. UNFAIR COMPETITION;
2. VIOLATION OF LABOR CODE;
3. VIOLATION OF F.L.S.A.; AND
4. VIOLATION OF PUBLIC POLICY

[JURY TRIAL DEMANDED]

///

///

///

///

1 BRIAN KING, PATRICK SOVACOOOL, and REX MAXWELL allege:

2 PARTIES, JURISDICTION, AND VENUE

3 1. Each Plaintiff is an individual residing in San Diego County.

4 2. S. A. THOMPSON, INC. is a California corporation with its headquarters in San Diego  
5 County and doing business as ROTO-ROOTER SEWER & DRAIN CLEANING SERVICE in San  
6 Diego County.

7 3. STANLEY A. THOMPSON is an individual residing in San Diego County.

8 4. LINDA A. BLACK is an individual residing in San Diego County.

9 5. The true names and capacities of DOE 1 through DOE 10 are unknown, and Plaintiffs  
10 will seek leave to amend this complaint to set forth the true names and capacities thereof when they  
11 have been ascertained.

12 6. Each of the fictitiously named DOE defendants is responsible for, or has contributed  
13 to, the matters giving rise to the relief sought herein.

14 7. Plaintiffs seek an award of damages in an amount exceeding twenty five thousand  
15 dollars (\$25,000).

16 GENERAL ALLEGATIONS

17 8. Each Plaintiff was an employee of Defendants and performed work for Defendants.

18 9. Defendants willfully and unlawfully withheld part of the pay owed to employees,  
19 including each Plaintiff, including, but not limited to, overtime wages for work in excess of 8 hours in a  
20 day and/or 40 hours in a week.

21 10. Defendants were required, but failed, to pay employees, including each Plaintiff except  
22 BRIAN KING, all wages earned and owing at the time of their separation from employment.

23 11. Defendants were required, but failed, to maintain a designated wage scale as required  
24 by statute or contract for public works services performed by employees, including each Plaintiff.

1           12. Defendants failed to provide employees, including each Plaintiff, with an itemized  
2 written statement accurately reflecting gross wages earned, piece-rate earnings, the applicable piece  
3 rate, all deductions taken, and net wage earned.

4           13. Defendants were required, but failed, to indemnify employees, including each Plaintiff,  
5 for losses incurred in the course of the discharge of their duties.

6           14. Defendants were required, but failed, to provide employees, including each Plaintiff,  
7 with tools necessary to perform the work they were hired to perform.

8           15. Defendants paid employees, including each Plaintiff, less than the minimum wage for  
9 some hours worked.

10           16. Defendants retaliated against employees, including each Plaintiff, by reducing their  
11 pay as a result of employee complaints, including those made by PATRICK SOVACOOOL, of  
12 Defendants unlawfully failing to provide tools necessary to perform the work they were hired to  
13 perform, and refusing to perform work under a real and apparent hazard.

14           17. Each Plaintiff has suffered, and continues to suffer, damages as a result of the  
15 conduct of Defendants.

16           18. Such a unity of interest and ownership existed between S. A. THOMPSON, INC. on  
17 the one hand, and STANLEY A. THOMPSON on the other hand, that the separateness of the  
18 corporation no longer existed, and if the conditional privilege of separate existence is recognized, and  
19 the acts alleged herein are deemed those of the corporation alone, an inequitable result will follow.  
20 Accordingly, STANLEY A. THOMPSON must be held liable as the alter ego of S. A. THOMPSON,  
21 INC.

22           19. Such a unity of interest and ownership existed between S. A. THOMPSON, INC. on  
23 the one hand, and LINDA A. BLACK on the other hand, that the separateness of the corporation no  
24 longer existed, and if the conditional privilege of separate existence is recognized, and the acts

1 alleged herein are deemed those of the corporation alone, an inequitable result will follow.

2 Accordingly, LINDA A. BLACK must be held liable as the alter ego of S. A. THOMPSON, INC.

3 FIRST CAUSE OF ACTION  
4 BY ALL PLAINTIFFS AND AGAINST ALL DEFENDANTS  
5 FOR UNFAIR COMPETITION

6 20. Plaintiffs re-allege paragraphs 6 through 19.

7 21. Defendants have violated and continue to violate Business & Professions Code,  
8 section 17200, *et seq.*, by engaging in acts of unfair competition.

9 22. Each Plaintiff is acting in its own interests, and as a private attorney general in the  
10 interests of the general public, and, as a result of unfair competition, Defendants have caused each  
11 Plaintiff to suffer injury in fact and lose money or property.

12 23. Defendants should be enjoined from committing acts of unfair competition.

13 24. Defendants should make full restitution to employees to restore all monies owing to  
14 employee but acquired or retained by Defendants as a result of unfair competition.

15 25. Defendants should be assessed a civil penalty of two thousand five hundred dollars  
16 (\$2,500) against Defendants for each act of unfair competition, a civil penalty of one hundred dollars  
17 (\$100) per initial violation, and two hundred dollars (\$200) per subsequent violation, for unlawfully  
18 withholding wages, and a civil penalty of fifty dollars (\$50) against Defendants for each act of failure to  
19 pay overtime wages, according to proof at trial.

20 26. Each Plaintiff is entitled to an award of statutory penalties, statutory damages, unpaid  
21 wages, actual damages, interest, costs of suit, and attorney fees, against Defendants according to  
22 proof at trial.

23 ///

24 ///

///

1 SECOND CAUSE OF ACTION  
2 BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS  
3 FOR VIOLATION OF LABOR CODE

4 27. Plaintiffs re-allege paragraphs 6 through 19.

5 28. Defendants violated Labor Code sections 201, 202, 203, 216, 218, 221, 223, 226,  
6 1174, 1174.5, 1175, 1194, 2802, 6310 and 6311.

7 29. Defendants should be assessed a civil penalty of five-hundred dollars (\$500) for failing  
8 to maintain accurate and complete records of hours worked by Plaintiffs.

9 30. Each Plaintiff is entitled to an award of statutory penalties, statutory damages, unpaid  
10 wages, actual damages, interest, costs of suit, and attorney fees, against Defendants according to  
11 proof at trial.

12 31. Each Plaintiff, except BRIAN KING, is entitled to a civil penalty against Defendants in  
13 the form of a daily waiting-time penalty for nonpayment of wages at their daily wage rate at the time  
14 their employment ended and until paid in full.

15 THIRD CAUSE OF ACTION  
16 BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS  
17 FOR VIOLATION OF F.L.S.A.

18 32. Plaintiffs re-allege paragraphs 6 through 19.

19 33. Defendants violated the Fair Labor Standards Act of 1938, under Title 29, Chapter 8,  
20 Section 207 of the United States Code.

21 34. Each Plaintiff is entitled to an award in the amount of their unpaid minimum wages,  
22 and their unpaid overtime compensation, and in an additional equal amount as liquidated damages,  
23 as well as costs of suit and reasonable attorney's fees.

24 ///

///

///



1 FOURTH CAUSE OF ACTION  
2 BY PATRICK SOVACOOOL AGAINST ALL DEFENDANTS  
3 FOR VIOLATION OF PUBLIC POLICY

4 35. Plaintiffs re-allege paragraphs 6 through 19.

5 36. Defendants demoted employees, including PATRICK SOVACOOOL.

6 37. The motivating reason that Defendants demoted employees, including PATRICK  
7 SOVACOOOL, was because PATRICK SOVACOOOL complained that Defendants unlawfully failed to  
8 provide tools necessary to perform the work that he and others were hired to perform, and for refusing  
9 to perform work under a real and apparent hazard.

10 38. The conduct of Defendants was outrageous, and intended to cause PATRICK  
11 SOVACOOOL emotional distress and economic harm.

12 39. PATRICK SOVACOOOL suffered severe emotional distress and economic damages.

13 40. The conduct of Defendants caused PATRICK SOVACOOOL to suffer severe emotional  
14 distress and economic damages.

15 41. Defendants acted with malice or oppression towards PATRICK SOVACOOOL.

16 42. PATRICK SOVACOOOL should be awarded compensatory damages, punitive and  
17 exemplary damages, costs of suit, and attorney fees, against Defendants according to proof at trial.

18 Respectfully submitted,

19 Dated: 5 - 30 - 08

20 TYSON & TYSON, LLP

21 By: Matthew Tyson  
22 MATTHEW P. TYSON  
23 ZACHARY T. TYSON  
24 Attorneys for  
BRIAN KING  
PATRICK SOVACOOOL  
REX MAXWELL



1 John C. Wynne (Bar No. 83041)  
Elizabeth Burke Vann (Bar No. 249252)  
2 **DUCKOR SPRADLING METZGER & WYNNE**  
A Law Corporation  
3 3043 4<sup>th</sup> Avenue  
San Diego, California 92103  
4 (619) 209-3000; (619) 209-3043 fax

5 Attorneys for Defendants S.A. THOMPSON, INC., a  
California corporation dba ROTO-ROOTER SEWER  
6 & DRAIN CLEANING SERVICE; STANLEY A.  
THOMPSON; and LINDA A. BLACK.  
7

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 BRIAN KING; PATRICK SOVACOOOL;  
and REX MAXWELL, individually, and as  
11 private attorney generals in the interests of  
the general public,  
12

13 Plaintiffs,

14 v.

15 S.A. THOMPSON, INC., a California  
corporation D.B.A. ROTO-ROOTER  
SEWER & DRAIN CLEANING  
16 SERVICE; STANLEY A. THOMPSON;  
LINDA A. BLACK; and DOE 1 through  
17 DOE 10, inclusive,

18 Defendants.  
19

CASE NO.:

DECLARATION OF ELIZABETH B. VANN

Action Filed:  
Trial Date: None set

20 I, ELIZABETH B. VANN, declare:

21 1. I am an associate attorney with the law firm of Duckor Spradling Metzger &  
22 Wynne, attorneys of record for Defendants in the above-captioned matter. I have personal  
23 knowledge of the facts set forth in this declaration. I make this declaration of my own personal  
24 knowledge, and if called as a witness, I could and would testify competently to the matters set  
25 forth herein. I offer the following declaration testimony in support of Defendants' Notice of  
26 Removal.

27 2. Prior to filing the First Amended Complaint, counsel for Plaintiffs inquired as to  
28 whether counsel for Defendants had the authority to receive service on behalf of Defendants, and

1 I represented that we did have such authority.

2 3. A copy of the Amended Complaint was received by my office on June 10, 2008,  
3 but no Notice and Acknowledgment of Service form was served with it.

4 4. I have represented to counsel for Plaintiffs that even though we have the authority  
5 to accept service on behalf of Defendants, we maintain that the California Rules of Civil  
6 Procedure do require a Notice and Acknowledgement of Service form to be served with the First  
7 Amended Complaint and signed by us in order to effectuate service. Accordingly, I have further  
8 represented to counsel for Plaintiffs that we contend that service of the First Amended Complaint  
9 was not effectuated until June 24, 2008, the date on which we provided written notice to  
10 Plaintiffs' counsel that we were, in fact, accepting service as of that date.

11 5. Counsel for Plaintiffs maintain that the California Rules of Civil Procedure do not  
12 require a Notice and Acknowledgement of Service form to be served and signed in this instance,  
13 and thus, contend that service of the First Amended Complaint was effectuated on June 10, 2008.

14 I declare under penalty of perjury under the laws of the State of California that the  
15 foregoing is true and correct. Executed this 27th day of June, 2008 at San Diego, California.

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19 ELIZABETH B. VANN  
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**UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

**# 152436 - TC  
\* \* C O P Y \* \*  
June 30, 2008  
16:44:04**

**Civ Fil Non-Pris**

USAO #: 08CV1164

Judge.: M. JAMES LORENZ

Amount.: \$350.00 CK

Check#: BC20880

**Total-> \$350.00**

FROM: BRIAN KING ET AL

VS

S. A. THOMPSON DBA ROTO ROOTER

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers required by the local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the clerk of court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Brian King, Patrick Sovacool, and Rex Maxwell

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attys. Matthew & Zachary Tyson, TYSON & TYSON, LLP, 2550  
Fifth Ave., 9th Floor, San Diego, CA 92103; (619) 720-8350

## DEFENDANTS

S.A. Thompson, Inc., a CA Corp. dba Roto-Rooter Sewer &  
Drain Cleaning Service, Stanley A. Thompson, Linda A. Black  
County of Residence of First Listed Defendant SAN DIEGO  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED

Attorneys (If Known)

John Wynne; Elizabeth Vann, Duckor Spradling Metzger &  
Wynne, 3043 4th Ave., San Diego, CA 92103; (619) 209-3000

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                                   |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
F.L.S.A. Violations and violations of CA Labor and Business & Professions Codes and Public Policy

Brief description of cause:  
Pitts. allege violations of FLSA, CA Labor Code, Unfair Business Practices, & Public Policy.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
 DEMAND \$

CHECK YES only if demanded in complaint:  
 JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

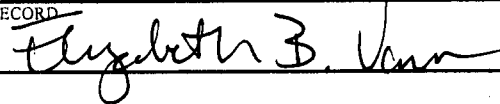
DOCKET NUMBER

DATE

06/27/2008

SIGNATURE OF ATTORNEY OF RECORD

Elizabeth B. Vann



FOR OFFICE USE ONLY

RECEIPT #

152136

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

TAC 6/30/08

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.